

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

JUNE 28 2007

COURT OF APPEALS  
DIVISION TWO

MIRAMONTE T.,

Appellant,

v.

ARIZONA DEPARTMENT OF  
ECONOMIC SECURITY and  
SAM T.,

Appellees.

2 CA-JV 2007-0002

DEPARTMENT A

MEMORANDUM DECISION

Not for Publication

Rule 28, Rules of Civil

Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 17300900

Honorable Joan L. Wagener, Judge Pro Tempore

AFFIRMED

Law Office of Randi E. Alexander, P.C.

By Randi E. Alexander

Tucson

Attorney for Appellant

Terry Goddard, Arizona Attorney General

By William V. Hornung

Tucson

Attorneys for Appellee Arizona  
Department of Economic Security

H O W A R D, Presiding Judge.

¶1 Miramonte T., the mother of Sam T., born in 2005, appeals from the juvenile court's December 2006 order terminating her parental rights to Sam on the grounds of mental illness and/or mental deficiency, A.R.S. § 8-533(B)(3), and length of time in a placement out of the home pursuant to court order, § 8-533(B)(8)(b). She maintains the Arizona Department of Economic Security (ADES) failed to sustain its burden of establishing it had provided her "timely, and therefore appropriate, family reunification services." We affirm.

¶2 Miramonte was living in a substance abuse shelter when she gave birth to Sam in early 2005. In March, ADES took custody of Sam because Miramonte admitted she was planning to leave the shelter with a man she had been involved with and with whom she had used methamphetamine. ADES was concerned about Sam, given Miramonte's history of substance abuse and the fact that her rights to two other children had been terminated by courts in two other jurisdictions. ADES filed a dependency petition that same month. Sam was adjudicated dependent in April 2005 after Miramonte admitted allegations in an amended dependency petition. Among the allegations Miramonte admitted was that her rights to two other children had been terminated, one as a result of her methamphetamine and alcohol abuse; the man with whom Miramonte had intended to leave the substance abuse shelter had been "involved with the mother during the prior dependency in California"; and he was "reported to have a history of alcohol and methamphetamine abuse."

¶3 Although the initial case plan goal was reunification of the family, after a permanency hearing in March 2006, the juvenile court found Miramonte was in partial compliance with the case plan and changed the plan to a concurrent goal of reunification and severance and adoption. Following the continued permanency hearing in June, the juvenile court found severance of Miramonte’s parental rights would be in Sam’s best interests and directed ADES to file a motion to terminate her rights, which it did shortly thereafter. The court terminated Miramonte’s parental rights in December 2006 after four days of hearings. This appeal followed.

¶4 Miramonte contends that here, as in *Mary Ellen C. v. Arizona Department of Economic Security*, 193 Ariz. 185, 971 P.2d 1046 (App. 1999), ADES failed to provide appropriate services designed to reunify her with Sam. She maintains the services were not appropriate because ADES did not have “psychoeducational testing for the cognitive component” performed until December 2005. Therefore, she argues, services were provided for an extended period of time without the recognition that her ability to understand was compromised and without proper focus on those limitations.

¶5 Miramonte’s parental rights were terminated based on her mental illness or mental deficiency and fifteen-month, out-of-home placement. She is correct that, as to both grounds, ADES was required to provide her appropriate services designed to help her attain the initial case plan goal of reunification. *See id.* ¶¶ 31-34. And ADES had the burden of establishing this fact, together with the other statutory requirements, by clear and convincing

evidence. *See Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 8, 83 P.3d 43, 47 (App. 2004). On review, we will not disturb a juvenile court's order terminating a parent's rights so long as there is reasonable evidence to support the findings of fact upon which the order is based. *Jennifer B. v. Ariz. Dep't of Econ. Sec.*, 189 Ariz. 553, 555, 944 P.2d 68, 70 (App. 1997).

¶6 We note at the outset that, throughout the dependency, the juvenile court specifically found the reunification services ADES was providing were appropriate. Miramonte did not challenge the orders in which the juvenile court made such findings. Additionally, in its order terminating Miramonte's parental rights, the juvenile court made thorough, extensive findings of fact, specifying in detail the evidence that supported those factual findings. Though no purpose would be served by rehashing the court's order in its entirety, *see Jesus M. v. Arizona Department of Economic Security*, 203 Ariz. 278, ¶ 16, 53 P.3d 203, 207-08 (App. 2002), we note certain portions of the court's order in addressing the issue Miramonte raises on appeal.

¶7 After detailing the plethora of services ADES provided and entering specific findings on both statutory grounds for severance, the juvenile court found as follows:

[ADES] has made diligent efforts to provide appropriate remedial services to the family. The ADES provided the mother far in excess of the services normally seen in a dependency case. The case managers and service providers involved with [Miramonte] provided a number of intensive, hands-on services to develop parenting skills. The case managers provided bus passes to the mother to support her engagement in services. The case managers also drove the mother to job interviews and

psychological evaluations. The case managers attempted to assist the mother in obtaining employment through referrals to employment readiness programs and workshops. Ms. Brooks transported [Miramonte] to the JOBS office and assisted her in looking through job listings. The ADES attempted to gain the mother's eligibility in the [Department of Developmental Disabilities] program through referrals to psychological evaluations and a neuropsychological evaluation as well as making efforts to obtain [her] high school records . . . . The ADES attempted to provide [Miramonte] with a means to address her childhood issues and relationship issues through individual therapy, but the mother did not follow through consistently with those services.

¶8 The record supports these and the court's other findings of fact. We note, in particular, that the record shows ADES had Miramonte psychologically evaluated in April 2005 by Dr. Karen Paulsen-Balch about a month after Sam was removed from her custody. The purpose of the evaluation was to determine if Miramonte suffered from a mental condition, deficiency, or disorder so Paulsen-Balch could recommend specific services to assist her. Thereafter, ADES provided Miramonte a panoply of services, precisely as the juvenile court found. But she left the substance abuse shelter where she had been living and where services were being provided; she left the state at one point; and although at times she availed herself of the many services provided, ultimately, she only partially complied with the requirements of the case plan and never enough to warrant the court's returning Sam to her custody.

¶9 We find well taken ADES's point that any delay in obtaining a proper evaluation of Miramonte's cognitive limitations was of no moment. As ADES points out,

Dr. Michael German, who conducted a neuropsychological evaluation of Miramonte in February 2006,<sup>1</sup> confirmed what had already been diagnosed and documented: that Miramonte has cognitive difficulties that make it difficult for her to understand what is being said to her and to follow instructions. German added:

She may need frequent repetitions or re-statements. Reading material should be relatively basic for her. She had trouble with mental organization, so she needs assistance in staying organized, focused, and on task. Complex challenges will be difficult. Background noise and distractions will further diminish her capabilities.

Is prolonged substance abuse a likely cause of the neurological impairment? That is difficult to impossible to know. What we can say is that there is probably an interaction between the neurological dysfunction and [Miramonte's] propensity for substance abuse. She is likely to be easily frustrated and substances may be a form of self-medication for her.

¶10 An abundance of evidence was presented of the efforts made to address Miramonte's long-term addiction to substances, particularly methamphetamine. Additionally, as ADES points out, those who were providing services were well aware of Miramonte's apparent mental difficulties and spent significant time not just recommending

---

<sup>1</sup>As Dr. German stated in his report, Dr. Paulsen-Balch had recommended the neuropsychological evaluation because she had found Miramonte was highly disorganized, inconsistent in her knowledge base, and had varying degrees of cognitive and intellectual abilities. German stated in the report the purpose of the evaluation was "to address whether [Miramonte] ha[d] any neurological deficits that could be contributing to her problems in completing her . . . case plan and being able to appropriately parent her child." He concluded she showed signs of mild neurological dysfunction or impairment, the cause of which was unknown.

additional services, but physically transporting her, reminding her of telephone calls she had to make, and essentially leading her through the process. For example, the first case manager assigned to the case testified that among the things she had arranged was a thorough assessment of Miramonte for substance abuse because she did not deem the shelter's evaluation of her sufficiently comprehensive. The case manager also testified she knew, based on her observations, that Miramonte needed to have things explained to her carefully and phrased in a way that Miramonte could understand because "sometimes [Miramonte] has difficulty comprehending the consequences, what she's doing." The case manager elaborated on the efforts she and others made to assure Miramonte understood what was expected of her in complying with the requirements of the case plan and the consequences of not complying.

¶11 We agree with ADES the record shows service providers and case managers "had accommodated [Miramonte's special needs] . . . since the outset of the case." We conclude the juvenile court's finding that ADES provided Miramonte appropriate reunification services is amply supported by the record. Therefore, we affirm the juvenile court's order terminating Miramonte's parental rights to Sam.

---

JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

---

JOHN PELANDER, Chief Judge

---

GARYE L. VÁSQUEZ, Judge